

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :
 :
Plaintiff, : 08-CR-76
 :
-against- : United States Courthouse
 :
 : Brooklyn, New York
CHARLES CARNEGLIA, :
 :
Defendant. :
 : September 17, 2009
 : 11:00 a.m.

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TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE JACK B. WEINSTEIN
UNITED STATES DISTRICT SENIOR JUDGE

APPEARANCES:

For the Plaintiff: BENTON J. CAMPBELL, ESQ.
United States Attorney
BY: ROGER BURLINGAME, ESQ.
EVAN NORRIS, ESQ.
MARISA SEIFAN, ESQ.
Assistant United States Attorneys

For the Defendant: CURTIS FARBER, ESQ.
KELLEY SHARKEY, ESQ.

Probation: SINDEE HAASNOOT

Court Reporter: FREDERICK R. GUERINO, C.S.R.
225 Cadman Plaza East
Brooklyn, New York
718-330-7687

Proceedings recorded by mechanical stenography, transcript
produced by CAT.

1 THE COURT CLERK: Criminal cause for sentencing:
2 United States of America v. Charles Carneglia.

3 Counsel, note your appearances, please. For the
4 United States?

5 MR. BURLINGAME: Roger Burlingame,, Evan Norris and
6 Marisa Seifan for the United States Attorney's Office, joined
7 by Shanida Moore, paralegal, and Sindee Haasnoot form
8 Probation.

9 MR. FARBER: Good morning, your Honor.
10 Curtis Farber for Charles Carneglia.

11 MS. SHARKEY: Good morning, Judge.
12 Kelly Sharkey for Mr. Carneglia.

13 THE COURT: Swear the defendant, please.

14 (The defendant is sworn in at this time.)

15 THE COURT: Do you require an interpreter, sir?

16 THE DEFENDANT: No.

17 THE COURT: Have you read the presentence report and
18 had it explained to you by your attorney?

19 THE DEFENDANT: Yes.

20 THE COURT: Are you ready to be sentenced?

21 THE DEFENDANT: Yes.

22 THE COURT: What is your citizenship?

23 THE DEFENDANT: United States citizen.

24 THE COURT: Are you satisfied with your attorneys?

25 THE DEFENDANT: Well, if I would have more time to

1 confer with them, yes.

2 THE COURT: Do the attorneys have a conflict?

3 MS. SHARKEY: No, Judge.

4 MR. FARBER: No, judge.

5 THE COURT: Any unresolved motions or contentions,
6 government?

7 MR. BURLINGAME: No, Judge.

8 THE COURT: Defendant?

9 MR. FARBER: We have objections to certain
10 paragraphs in the presentence report that I filed on August
11 3rd, your Honor.

12 THE COURT: State them, please. Make reference to
13 particular paragraphs, please.

14 MR. FARBER: Yes, Your Honor.

15 First, with regard to paragraph 22, defense objects
16 to the inclusion in the calculations for sentencing purposes
17 information related to the death of Albert Gelb.

18 THE COURT: Change paragraph 22 so that it begins,
19 "it is alleged" .

20 MR. BURLINGAME: Your Honor, if I might.

21 THE COURT: I will hear you.

22 MR. BURLINGAME: The government would seek that the
23 court finds the Gelb murder to be relevant conduct relevant.

24 THE COURT: It is relevant conduct, but the
25 paragraph will be modified to read, "it is alleged that" to

1 begin. I have already ruled on the motion with respect to
2 the victim indicating that it is relevant, and that's a
3 matter of record.

4 MR. BURLINGAME: Thank you, Judge.

5 THE COURT: What else?

6 MR. FARBER: With respect to paragraph 37, the
7 defense objects to the inclusion of this information in the
8 presentence report for calculations purposes.

9 THE COURT: Denied. There was evidence. Next.

10 MR. FARBER: With respect to paragraph 40, again the
11 defense objects to the inclusion of this information for
12 calculation purposes.

13 THE COURT: Begin the paragraph by saying "it was
14 alleged," otherwise it will remain. Next.

15 MR. FARBER: With regard to paragraph 41, it is a
16 list of uncharged crimes that the government intends it can
17 prove by a preponderance of evidence. The defense disagrees
18 with this conclusion and objects for the Court's
19 consideration of the same.

20 THE COURT: Well, these were not charged.

21 MR. BURLINGAME: That's correct, Judge, these were
22 uncharged acts. But there was evidence that was introduced
23 to them as part of the racketeering conspiracy, and I think
24 there was sufficient evidence to find them relevant conduct.
25 But there's no objection to the elimination of these crimes

1 from the PSR or because they have no bearing on the guideline
2 calculation.

3 THE COURT: Paragraph 41 will be omitted. Next.

4 MR. FARBER: With regard to paragraph 50, in that
5 Mr. Carneglia was not convicted of these particular charged
6 extortions and murders, defense objects to the inclusion of
7 the same for calculation purposes.

8 THE COURT: What's the government's view?

9 MR. BURLINGAME: Same position, Judge. I think it
10 is appropriately found as relevant conduct was proven by a
11 preponderance, but it had no bearing on the final guidelines
12 calculation.

13 THE COURT: Exclude it. Next.

14 MR. BURLINGAME: Except with respect to paragraph
15 50-A, which is the Gelb murder, which you already ruled on.

16 THE COURT: Exclude paragraph 50-A. Next.

17 MR. FARBER: Paragraph 51, the objection that was
18 made with regard to paragraph 41 these were uncharged crime.

19 THE COURT: Government.

20 MR. BURLINGAME: Judge, I'm sorry, did you exclude
21 paragraph 50-A?

22 THE COURT: I did.

23 MR. BURLINGAME: I think that would be in conflict
24 with the Court's earlier ruling about the Gelb murder.

25 THE COURT: I don't believe it is.

1 What is your view on 51?

2 MR. BURLINGAME: The murder on 51 is the same -- I
3 mean, the view on 51 is the same position I articulated
4 earlier.

5 THE COURT: Exclude 51.

6 MR. FARBER: With regard to paragraph 107,
7 Racketeering Acts 11-A and 11-B, with regard to David
8 D'Arpino, defense objects to the four-level enhancement.

9 THE COURT: Excuse me, the paragraph now is what?

10 MR. FARBER: 107.

11 THE COURT: Yes.

12 MR. FARBER: There was a four-level enhancement for
13 permanent injury with respect to David D'Arpino. There was
14 no such evidence introduced at trial and the defense would
15 object to such an enhancement.

16 MR. BURLINGAME: Judge, there was evidence. There
17 was a picture of the scarring on his foot.

18 THE COURT: That is true.

19 MR. FARBER: Judge, I would be hesitant to call it a
20 scar. There was an indication of a very feint red mark. I
21 don't think it rises to the level of what would be considered
22 permanent injury. There's no testimony from Mr. D'Arpino or
23 anyone else to indicate that Mr. D'Arpino suffered any
24 impairment of the use of his foot.

25 THE COURT: I don't agree. Acid of the type that

1 was administered would cause permanent injury of this kind.
2 The four-level enhancement stands.

3 What else?

4 MR. FARBER: Paragraph 113, a similar enhancement
5 was given with regard to a another alleged victim of the
6 kidnapping. We had no information produced regarding that
7 victim.

8 THE COURT: Government?

9 MR. BURLINGAME: Well, that's slightly inaccurate.
10 There was evidence that the acid was also applied to his
11 foot. So it stands to reason you receive the same injuries
12 as D'Arpino.

13 THE COURT: But there was no evidence.

14 MR. BURLINGAME: No, there was no picture of this
15 man's foot.

16 THE COURT: There's no evidence of any permanent
17 injury. Paragraph 113, four is to be reduced to zero.

18 What else?

19 MR. FARBER: With respect to paragraphs 132 through
20 137, again the defense would object to the inclusion of this
21 for calculation purposes.

22 THE COURT: What's the government's view?

23 MR. BURLINGAME: The court has found the Gelb murder
24 to be relevant conduct and, therefore, it is appropriately
25 included for guidelines calculation.

1 THE COURT: Exclude it.

2 What else?

3 MR. FARBER: With respect to paragraphs 138 through
4 143, the extortion at the Greentree Condominiums, again the
5 defense would object to inclusion of this for calculation
6 purpose.

7 THE COURT: What is the government's view?

8 MR. BURLINGAME: The Greentree calculations are
9 totally irrelevant to the total offense level. So the
10 government has no objection to eliminating their inclusion.

11 THE COURT: Exclude it.

12 MR. FARBER: With respect to paragraphs 144 through
13 149, which relates to the Robert Shaivo matter, we would
14 object to the inclusion of this information for calculation
15 purpose.

16 THE COURT: On what ground?

17 MR. FARBER: There was no conviction on this count,
18 your Honor.

19 THE COURT: What is the government's view?

20 MR. BURLINGAME: Same position, totally irrelevant
21 to the total offense level.

22 THE COURT: Exclude it.

23 MR. FARBER: With respect to paragraphs 150 through
24 223, that is, the John Gammarano murder conspiracy; the Danny
25 Marino murder conspiracy; the Peter Zuccaro murder

1 conspiracy; Cliffy last name unknown murder solicitation;
2 John Favara accessory to murder; assault of Carmine Agnello;
3 assault of Andrew Curro; aggravated assault of Nicky
4 Pasquale; aggravated assault of Louis Aurrichio; assault of
5 Angelo Ruggiero, Jr.; extortion of Gambino Family Associate
6 Michael Reiter; extortion of Gambino Family Associate Keith
7 Pellegrino; defense would object to -- actually, I should
8 continue on. I'm sorry, Judge. If I could have one moment,
9 Judge?

10 THE COURT: Yes.

11 (Pause)

12
13 MR. FARBER: If I could continue on, it will go to

14 --

15 THE COURT: Well, you are seeking to exclude?

16 MR. FARBER: All crimes which were uncharged

17 THE COURT: Paragraphs 150 to what?

18 MR. FARBER: Through 255

19 THE COURT: 255?

20 MR. FARBER: Yes, Your Honor.

21 THE COURT: Is that what you said.

22 MR. FARBER: 255, that's correct.

23 THE COURT: What is the government's view?

24 MR. BURLINGAME: Judge, these are appropriately
25 included as relevant conduct. They are all irrelevant to the

1 total offense level, except for the Favara murder. We have
2 no objection to the exclusion of them for calculation
3 purpose. But the Favara murder is relevant conduct and
4 should be included for the guidelines calculation.

5 THE COURT: One, the Gammarano murder is excluded.
6 The Marino murder is excluded, and the Zuccaro murder is
7 excluded, correct?

8 MR. BURLINGAME: Correct.

9 THE COURT: Cliffy murder solicitation is excluded,
10 correct?

11 MR. BURLINGAME: Correct.

12 THE COURT: John Favara, accessory to murder, is
13 excluded?

14 MR. BURLINGAME: This is the one that our position
15 is it is relevant conduct. Multiple witnesses testified
16 about his role in disposing of the body, and it does make a
17 difference to the guidelines calculation, and is
18 appropriately included.

19 THE COURT: He was not charged?

20 MR. BURLINGAME: That's correct.

21 THE COURT: I'm going to exclude it. I don't
22 believe that it is appropriate to include it in determining
23 the guideline. It is appropriate for the court to consider
24 it in connection with the degree of sentence under the level
25 that the guidelines provide, but I don't see it as part of

1 the calculation. It wasn't charged.

2 MR. BURLINGAME: If that's the court's view, that's
3 fine. There is authority for the court, if the court finds
4 it to be proof beyond a preponderance to find it relevant
5 conduct, at which time it is appropriate to include it in the
6 guidelines calculation.

7 THE COURT: I know there's such authority. I'm
8 dubious about it, in view of Booker and the jury's obligation
9 to make these decisions, so it will be excluded.

10 Agnello is out, correct?

11 MR. BURLINGAME: Correct. There's no objection, if
12 that's the court's position, there's no objection all the way
13 through to paragraph 255.

14 THE COURT: It will all be excluded.

15 Yes, what else?

16 MR. FARBER: Paragraph 270, which provides for one
17 unit to be calculated with regard to the conspiracy to murder
18 Albert Gelb.

19 THE COURT: Excluded.

20 MR. FARBER: 277 --

21 THE COURT: What about 271?

22 MR. FARBER: There is no point attributed to that,
23 your Honor.

24 THE COURT: So you don't want it excluded?

25 MR. FARBER: I would want it excluded.

1 THE COURT: It should be excluded from the
2 calculation.

3 What is the next one?

4 MR. FARBER: Well, then, I would ask to or move to
5 exclude 272 through 289.

6 THE COURT: Government's view?

7 MR. BURLINGAME: As stated previously, I think they
8 are appropriately included, but the court has already ruled
9 on it.

10 THE COURT: Excluded.

11 What else?

12 MR. FARBER: With regard to paragraph 303 --.

13 THE COURT: Well, let's get the computation.

14 Will the probation officer work out the total
15 offense level with those exclusions. What is it?

16 THE PROBATION OFFICER: We remain with an adjusted
17 offense level of 43, your Honor at paragraph 291, and with
18 five levels for the grouping, we are adding four to that at
19 paragraph 292.

20 THE COURT: It should be four instead of five?

21 THE PROBATION OFFICER: Yes, Your Honor.

22 THE COURT: Yes.

23 MR. FARBER: Paragraph 293, combined adjusted
24 offense level should be 47.

25 THE COURT: Yes.

1 THE PROBATION OFFICER: And 295 should be 47 as well
2 for your total offense level.

3 THE COURT: 47. What is the view of the defendant?

4 MR. FARBER: If I may have a moment.

5 (Pause)

6 THE COURT: Government?

7 MR. BURLINGAME: That's correct, Judge, given the
8 rulings that your Honor has made

9 MR. FARBER: That sounds correct, your Honor.

10 THE COURT: Now, what else do you have?

11 MR. FARBER: Paragraph 303 provides for a one
12 criminal history point for Mr. Carneglia's 1985 conviction
13 for driving a vehicle while impaired by alcohol

14 THE COURT: What's the view of probation?

15 THE PROBATION OFFICER: It falls within the 15-year
16 period of conviction, your Honor, that's why it was assigned
17 one point.

18 MR. FARBER: Your Honor, it is a violation, not a
19 crime, under New York State law.

20 MR. BURLINGAME: Judge, it is specifically the
21 commentary to 4A1.2(c), which governs -- specifically singles
22 out driving while intoxicated as being a crime for which a
23 point is properly assigned.

24 MR. FARBER: Under New York law, intoxicated,
25 impaired are considered two different crimes.

1 THE COURT: Yes, but it is not New York law which
2 governs the application, but federal law, and under federal
3 law I believe probation is correct, and there that one point
4 is appropriately provided.

5 Next.

6 MR. FARBER: The defense objected to the language of
7 paragraph 308, which on the one hand said Mr. Carneglia was
8 fully compliant with conditions of supervised release, and
9 then went on to state they could not find an explanation as
10 to why no violation proceedings were initiated against
11 Mr. Carneglia for his violation of supervised release.

12 THE COURT: No, I think that's accurate, since the
13 court's and in the jury's view is that he remained a member
14 of this illegal conspiracy during this period for which he
15 should have been violated.

16 THE PROBATION OFFICER: That's also addressed in the
17 addendum to the report, that while the supervising officer
18 reported that the defendant was fully compliant, he was
19 obviously continuing his criminal conduct while on supervised
20 release, and violation proceedings should have been initiated
21 against him. However, no documentation was contained in the
22 supervision file to explain why his supervising officer did
23 not initiate violation proceedings based on his continued
24 association with the Gambino Family.

25 THE COURT: That's my understanding, and therefore

1 the paragraph will stand as written.

2 What else?

3 MR. FARBER: The other objections which I note in my
4 file, your Honor, have now been addressed by the court:
5 Paragraph 309, which sought to reduce the original history
6 down by one point, which the court already denied; paragraphs
7 310 and 311, which the court just addressed now; and 312 as
8 well. That's the scope of the objections by defense.

9 THE COURT: And the government's view on those?

10 MR. BURLINGAME: Those paragraphs are all correct.

11 THE COURT: Motion denied.

12 So we have 47 offense level, instead of 48.

13 THE PROBATION OFFICER: His offense level is 47,
14 criminal history category remains at five.

15 THE COURT: Remains at five, which means that the
16 sentence is life under the guidelines.

17 THE PROBATION OFFICER: Correct, your Honor.

18 THE COURT: No variation in that. But you will make
19 the changes as the court directed.

20 THE PROBATION OFFICER: Yes, Your Honor.

21 MR. BURLINGAME: Judge, there's one thing I would
22 like to bring out.

23 In paragraphs 45 and 46, there's some conflict.
24 Paragraph 46 says that probation does not have any
25 information related to restitution that may be owed by the

1 defendant. But paragraph 45 sets forth that Emily Gelb,
2 sister of Albert Gelb, indicated a loss of \$7,000 for funeral
3 and related services. And given the Court's finding that was
4 relevant conduct, that the \$7,000 is appropriate restitution.

5 THE COURT: No, he was not convicted of that. It is
6 not appropriate restitution.

7 What is the view of the defendant?

8 MR. FARBER: We agree with the court, your Honor.

9 MR. BURLINGAME: Judge, there's rather strong case
10 law that restitution is proper for relevant conduct, even in
11 uncharged or acquitted counts.

12 THE COURT: Under the circumstances of this case, I
13 don't believe that restitution would be appropriate. Denied.

14 Anything further?

15 MR. BURLINGAME: No, Judge.

16 MR. FARBER: Nothing from the defense, your Honor.

17 THE COURT: Are you asking for a downward departure?

18 MR. FARBER: No, Your Honor.

19 THE COURT: We are making a video recording?

20 THE COURT CLERK: We are.

21 THE COURT: Any objection to the video recording?

22 MR. FARBER: No, Your Honor.

23 MR. BURLINGAME: No, Judge.

24 THE COURT: Was the proper guidelines manual used by
25 both parties.

1 MR. BURLINGAME: Yes, Your Honor.

2 MR. FARBER: Yes, judge.

3 THE COURT: The court observes and has observed the
4 defendant's demeanor. He appears to be capable of
5 understanding these proceedings and participating
6 appropriately.

7 Do counsel agree?

8 MR. FARBER: Yes, Your Honor.

9 MS. SHARKEY: Yes, Your Honor.

10 THE COURT: Do you wish a Fatico hearing?

11 MR. FARBER: No, Your Honor.

12 THE COURT: The defendant has the right to address
13 the court and to have witnesses on his behalf.

14 Counsel for the defendant will speak; victims may
15 speak under the statute.

16 The court has made particularized findings of fact
17 and law in this and prior proceedings.

18 Is there any other findings either side wishes?

19 MR. FARBER: No, Your Honor.

20 MR. BURLINGAME: No, Judge.

21 THE COURT: Do you wish a jury trial on any issue of
22 fact relating to the sentence?

23 MR. FARBER: No, Your Honor.

24 THE COURT: Are the calculations based on the ruling
25 of the court now correct?

1 MR. BURLINGAME: Yes, Judge.

2 MR. FARBER: Yes, Your Honor.

3 THE COURT: Does the defendant contend that he has
4 any assets?

5 MR. FARBER: No, Judge.

6 THE COURT: No assets?

7 MR. FARBER: No assets, your Honor.

8 THE COURT: What the government's view?

9 MR. BURLINGAME: The government is unaware of any
10 assets in the defendant's possession.

11 THE COURT: The defendant, in the court's view, in
12 view of his long criminal history, may well have assets due
13 to him, and, therefore, the fines will be the maximum.

14 No restitution is provided under the law.

15 Fines are payable without interest.

16 Have you informed the defendant of his right to
17 appeal?

18 MR. FARBER: Yes, Your Honor.

19 THE COURT: Will you take adequate steps to appeal,
20 if that is his wish?

21 MR. FARBER: We will, your Honor.

22 THE COURT: No date for payment of fine is set.

23 Not assets have yet been found.

24 Special assessment of r \$100 on each count,
25 cumulative. \$200 is imposed.

1 Supervised release subject to 5D1.2, 5D1.3(a), (c),
2 (d) and (e).

3 Have you ever had a mental problem requiring
4 psychiatric treatment, sir?

5 THE DEFENDANT: No.

6 THE COURT: Do you take drugs.

7 THE DEFENDANT: No.

8 THE COURT: Do you gamble?

9 THE DEFENDANT: Prescription drugs for my lungs.

10 THE COURT: I'm sorry?

11 THE DEFENDANT: Prescription drugs for my lungs.

12 THE COURT: Prescription, yes.

13 Do you gamble?

14 THE DEFENDANT: No, not at all.

15 THE COURT: You have no guns, no drugs, except by
16 prescription, and have nothing to do with any criminals,
17 during your period of supervised release.

18 Should you ever be released during the period of
19 supervised release, the probation service may enter your
20 house without notice and you will give them full information
21 as required of financial and other matters.

22 Is there anything else that probation wishes?

23 THE PROBATION OFFICER: No, Your Honor.

24 THE COURT: Was any of your property taken when you
25 were arrested?

1 THE DEFENDANT: Excuse me?

2 THE COURT: Was your property taken, personal
3 property, when you were arrested?

4 THE DEFENDANT: Yes, my license, my identification.

5 THE COURT: Would you see that it is returned,
6 please, to counsel.

7 MR. BURLINGAME: Yes, Judge.

8 THE COURT: Are there any open charges?

9 MR. WEINSTEIN: No, Judge.

10 THE COURT: There are a number of charges.

11 MR. BURLINGAME: We move to dismiss the charges upon
12 which the jury hung.

13 THE COURT: Failed to agree.

14 MR. BURLINGAME: Correct.

15 THE COURT: I don't know whether that's wise.
16 Should there be a reversal, you don't want those dismissed.

17 Consult with your associate.

18 (Pause)

19

20 MR. BURLINGAME: Thank you for the opportunity,
21 Judge. We would not want them dismissed.

22 THE COURT: Pursuant to Booker and related cases,
23 the parties will now address themselves to all elements of
24 Section 3553(a), the nature and circumstances of the offense,
25 the history and characteristics of the defendant, the need

1 for a sentence imposed to reflect the seriousness of the
2 offense, to promote respect for the law, to provide for just
3 punishment, to afford adequate general and specific
4 deterrence, to protect the public from further crimes of the
5 defendant, to provide the defendant with needed educational,
6 vocational training, medical care, and other correctional
7 treatment while incarcerated.

8 You have a GED now, sir?

9 THE DEFENDANT: Yes, sir

10 THE COURT: Do you want any other education or
11 vocational or other treatment in prison?

12 THE DEFENDANT: Yes, I would

13 THE COURT: What?

14 THE DEFENDANT: Whatever I could get

15 THE COURT: The defendant shall be afforded
16 educational opportunities

17 Any kind of vocational training, computers,
18 anything?

19 THE DEFENDANT: Computer training

20 THE COURT: In computer training, and will be given
21 medical treatment as required.

22 The statute requires the court to consider the kinds
23 of sentences available, and the guidelines, Sentencing
24 Commission statements and policies, need to avoid unwarranted
25 sentence disparity, and the need to give substantial weight

1 to the guidelines.

2 The court will impose a sentence under the
3 guidelines. But if any of the guideline computations were
4 found to be incorrect, the sentence will be imposed under
5 3553(a), in view of the special considerations in this case
6 requiring incapacitation and deterrence.

7 I will now hear from the parties with respect to the
8 sentence to be imposed.

9 Defendant?

10 MR. BURLINGAME: Judge, if I might just remind the
11 court, I'm not sure when you are planning on fitting them in.
12 There are seven victim statements

13 THE COURT: Yes. You wish to be heard after the
14 victims' statements or before?

15 MS. SHARKEY: Yes, Judge

16 THE COURT: After.

17 And the government, after or before?

18 MR. BURLINGAME: After

19 THE COURT: Okay.

20 Call your victims, please.

21 MR. BURLINGAME: Emily Gelb.

22 THE COURT: You may testify sitting there or here,
23 wherever it is more convenient.

24 MS. GELB: This is fine. Thank you.

25 THE COURT: Make sure the microphone is on, please,

1 marshal.

2 THE COURT: Oh, this is being sent into the overflow
3 room.

4 MS. GELB: I'm sorry.

5 THE COURT: Because there's not enough room for
6 everybody who wished to attend, we are being fed through
7 video into the overflow room for those who couldn't fit into
8 the courtroom, a video this procedure. So, may I suggest
9 that you come up here, and, therefore, the camera will be
10 able to send your testimony so everybody can see it.

11 MS. GELB: Thank you.

12 THE COURT: Good morning.

13 MS. GELB: Good morning.

14 I am Emily Gelb. Excuse me, okay.

15 THE COURT: Give her some water and tissue.

16 I'm Emily Gelb, sister of slain court officer Albert
17 Gelb.

18 I want to thank you, Judge Weinstein, for allowing
19 me to speak today. I cannot imagine anyone who has ever lost
20 a loved one could accept that idea that their feelings are
21 irrelevant. The need of every human being to find comfort
22 and closure could not be trivialized. The Gelbs are an
23 emotional family. What I came to say today is difficult for
24 me, but it needs to be said, so please excuse me if I need a
25 moment or two along the way to regain my composure.

1 When someone you love dies, time stops everything,
2 except that immediate moment, blurs, and for the next several
3 days you walk like a soldier through your own private
4 battlefield, supported by family and friends, through the
5 funeral, through the burial, and then you are left alone to
6 try to make sense of it all, to curl up, to hug yourself, and
7 to cry.

8 It is not the same for all of us the way we grief.
9 It took my mother 20 years to hang a childhood picture of
10 Albee and myself on her wall. To this day my mother does not
11 know the details of this trial. She knows there will be one.
12 She asks from time to time, but I have always put her off,
13 changed the subject, to protect her from any more pain.

14 My Dad, the handsome strong superman I wanted to
15 marry when I was eight years old, never got back that twinkle
16 in his eye. He never smiled as wide a smile; never laughed
17 as richly after Albee died.

18 As for myself, I held fast to Albee's possessions.
19 Often alone late at night I would take out his beautiful
20 Spanish guitar, and as he had shown me so many times, I would
21 rap the strap around me. I would place my fingers over the
22 strings where his fingers used to be, hoping to feel a
23 connection, a warmth through the strings, some signal if he
24 was still with me. Some days it helped; some days it just
25 made the emptiness unbearable.

1 Now, fastforward 33 years later and time again
2 stops. I am back on that battlefield reliving that same
3 horror. I am flung back into those dark days watching myself
4 on the TV news, reading about my brother and my family in the
5 evening newspaper. I am amazed how easily I am back there,
6 the pain so real again. Time had healed my wounds, but fate
7 has ripped them open again.

8 Over the duration of this trial, I have spoken at
9 many luncheons honoring my brother. I have been to award
10 ceremonies where they called Albee a hero. Yes, he is a
11 hero, but not for the way he died. Albert Gelb, he is a hero
12 for the way he lived.

13 He was kind. He was funny. He was someone who made
14 you feel at ease in any situation, a spiritual man who looked
15 for the best in everyone. He was a respectful loving son,
16 grandson, cousin, friend, and my brother. He was proud to be
17 a court officer and we were proud for him. So it seems only
18 natural now that he stood by his principles, never for one
19 minute was he willing to be less than all we loved and
20 admired him for, and it cost him his life.

21 Well, this is the day of reckoning. You, Charles
22 Carneglia, you have no soul. There is a darkness that
23 surrounds you every day, an evil so heavy, it could be felt
24 by anyone in your presence. You have never shown any
25 remorse. My brother would ask me to show you mercy, but I am

1 not my brother. I am the one who mourns him. So I ask that
2 they lock you in a cage fit for an animal that you are, never
3 to see the sunlight, never to share another day with another
4 human being, a cage where you can live out your miserable
5 life, a filthy sewer where vermin like you belong.

6 For those of you whose job it is to decide, the Gelb
7 family, Albert's friends, and all of those who were fortunate
8 enough to know him, are watching and waiting and praying.
9 Voice your hardest blow, recommend your steepest sentence
10 today. Charles Carneglia is a pathetic, sick old man. Let
11 him suffer his last few miserable years in a hell of his own
12 making. At the end of this day, you can assure us that after
13 33 long years justice has been done. That the harshest
14 punishment has been meted out and my beautiful brave brother
15 Albert Gelb can rest in peace.

16 Up to today, I have mourned for my brother.
17 Beginning tomorrow, on the eve of Rosh Hashana, I will
18 celebrate his life. And, yes, as I have waited so long to
19 do, as tenderly as I can, I will tell my mother about this
20 trial. I will tell her the whole story. And I will tell her
21 it is finally over. Thank you.

22 THE COURT: Thank you.

23 Call the next witness. Please.

24 MR. BURLINGAME: Vivian Delgado.

25 THE COURT: Good morning.

1 MS. V. DELGADO: Good morning. Thank you, your
2 Honor, for listening to me.

3 I am Vivian Delgado, Jose Luis Delgado's second
4 daughter.

5 I wrote some of my feelings since this happened.
6 It's been a long time. It just feels like it just happened
7 all over again.

8 THE COURT: Could you move the microphone and try to
9 speak up. I know it is difficult, but do try.

10 Today there is no doubt that I could go on and on
11 about what a great man my father was. I can go on and on
12 about all of the great memories we could have shared if this
13 selfish man wouldn't have chose to live the life that he did.
14 He lives the life of destroying families, a life of making
15 money out of destroying homes. He's heartless.

16 I wrote a lot of things here, but what I really want
17 to say is, there's really nothing that I could probably say
18 that would hurt him, because this is what he did for a
19 living. He just has no heart. He has no remorse. He lived
20 destroys families and homes. He destroyed our relationship
21 with our sister, things that we can never get back, and he
22 really doesn't care. I can say a lot of things. I could
23 wish him a lot of things, but and nothing is going to hurt
24 him. There's nothing that I can do to hurt him.

25 So today I'm just going to ask the court -- first I

1 want to thank the court for bringing justice. But I just
2 want to say that I think there should be no mercy on his
3 part. I don't think he should get any privileges. I don't
4 think that we should put any time and money and taxes to pay
5 for him to take a computer class or for anything. Why should
6 he get any privileges? What about us, his children, his
7 family, that we had to struggle through school and to pay
8 bills and to do our activities without our father in our
9 life. That's something that we will never get back, never,
10 no matter how much time he gets. So I say no mercy.

11 You are heartless. You have no remorse. You are a
12 disgrace to society. You have built this for yourself, so
13 now it's you and God, and the Bible says revenge is God, and
14 you will get your revenge from the Lord.

15 Thank you for this time.

16 THE COURT: Thank you.

17 Next witness, please.

18 MR. BURLINGAME: Evelyn Colon.

19 THE COURT: Good morning.

20 MS. COLON: Good morning, Judge.

21 My name is Evelyn Colon. I am the oldest daughter
22 of Jose Delgado Rivera, of the seven children that he had.

23 Your Honor, I enclosed to you family photos of a
24 life that i had with my father. They say that a picture is
25 like a thousand words. This is what I lost because of that

1 murderer, Charles Carneglia. All I have left are pictures.

2 These pictures tell a story of a family man full of
3 life. When he walked into a room, he was the life of the
4 party. He loved all his children. Some of us weren't raised
5 with him, but he still loved us and we had our quality time
6 with our father. My father enjoyed many things during his
7 short life span. At age 47 it was taken away. He was trying
8 to live the American dream. He especially loved his
9 grandchildren. Not having my father in my life has been the
10 greatest loss. So, your Honor, I would like to explain to
11 you how this crime has affected me and my family emotionally
12 and physically.

13 This crime affected my marriage in so many ways that
14 sometimes I didn't even know who I was and what I was doing.
15 I put myself in many reckless situations. For example, I
16 used to leave my husband and kids home alone while I was
17 partying and trying to escape from many realities and
18 responsibilities. I know now that I was escaping from losing
19 my dear father, wondering who would have murdered him and
20 why. My life was a blur, even to the point of not
21 remembering my father's burial. Everyone tells me that I was
22 there, but I couldn't remember it. The words they used in
23 his eulogy raced in my mind constantly, thinking that I would
24 wake up from this horrendous nightmare. In reality, it is
25 not a dream, it was real.

1 Over the years I felt bad for my husband because he
2 endured a lot. He saw changes in me and in our marriage. I
3 sought spiritual help and guidance, as well as counseling to
4 help me with my family and my marriage. I lived with
5 depression and my health also deteriorated over the years
6 from the stress and anguish I endured.

7 This crime has affected my relationship with two of
8 my brothers and sisters. After my father's murder, I no
9 longer had a relationship with them. This caused a great
10 division between them and us all not knowing where they were
11 or if they were okay. This really took a toll on me. I saw
12 them for the first time in 18 years at this trial. That was
13 the hardest thing I ever had to go through to know I had two
14 sisters right in front of me that I don't even know them or
15 can't speak to them or console them. Not only did I lose my
16 father, but I lost two sisters.

17 Over the years I have been there for my other
18 brothers and sisters, as well as my nieces and nephews. Many
19 times I left my family behind to be there for them. This was
20 important to me because my father always told me if anything
21 was to happen, Anna would be there for us. That was his
22 wife. But that was not the case. I stepped in as the oldest
23 of seven and took the responsibility to keep us all together
24 as best I could. I made the promise that I would do whatever
25 I can for my brothers and sisters and their children, with my

1 husband's help. I have not yet missed a graduation of my
2 nieces and nephews because that is what my father would have
3 wanted.

4 My father and Anna were the godparents of my oldest
5 son David. They were committed to being there for him. That
6 privilege was taken from my father by that murderer Charles
7 Carneglia.

8 My sons David and James never knew what it was like
9 to be with their grandfather. They will never get to know
10 what it is to do fun things that a grandparent and
11 grandchildren can enjoy together. My father had five
12 grandchildren at the time. He enjoyed them dearly, but would
13 never get to see the ones he has now. He has a total of 16
14 grandchildren and one great grandson.

15 With all of that said, I have so much hurt because
16 of what has happened. This is a trial that was the most
17 difficult thing that I had ever had to go through in my
18 entire life. I thank my God Jehovah that I had him and the
19 faith in him to endure all of this and that my prayers were
20 answered. This is what has kept me going throughout the
21 years.

22 For many years I was kept in the dark not knowing
23 what happened that day and who would take a life from a
24 loving father, knowing that a mobster, a killer, a murderer,
25 the hit man of John Gotti did this to my father. It is just

1 so unbelievable. I kept hoping that it is just a dream.

2 This nightmare will live with me forever.

3 Through this trial I saw no remorse with this
4 monster. I watched this killer as he grunted when McMann
5 testified of the brutal killing that was premeditated by him
6 and his partners. Now I know what happened to my father on
7 his beautiful head in his coffin, his bumps and bruises. Not
8 only that he shot him from behind, but he pistol whipped him.
9 I saw my father's body with bullet wounds, heard the
10 testimony of the officer who arrived at the scene, and heard
11 how he tried to help my father, but it was too late.

12 Today, I will remember this day. I will bury my
13 father in my heart. I want to see closure today and I want
14 to see justice.

15 Judge, please consider imposing the maximum sentence
16 of life imprisonment because that's what he deserves. This
17 defendant does not deserve leniency because he has scarred so
18 many lives forever.

19 Your Honor, I would like to thank you for this
20 opportunity to express my feelings, as well at the U.S.
21 Attorneys, the agents, and court officers that have been
22 there, and many others for their support. Thank you.

23 THE COURT: Thank you.

24 THE COURT: Next witness, please.

25 MR. BURLINGAME: Mildred Delgado Wheeler.

(Continued on the next page.)

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1 MR. BURLINGAME: Mildred Delgado Wheeler

2 THE COURT: Good morning

3 MS. WYLER: Good morning. You changed my live on
4 December 14, 1990 when you brutally murdered my father Jose
5 Delgado River. My live was one of a fairytale. I had
6 everything and anything a child could possibly want. Most of
7 all I had the love of both parent with my twin sister.
8 Throughout our childhood experience we had the beautiful
9 things between a father and son would do together. Such as
10 fishing, hunting, camping playing ball, etc. You get my
11 point. You took that all away from me when you decided to
12 get up that morning and commit a crime for your own selfish
13 reasons.

14 I remember when I graduated from eighth grade, and I
15 looked directly into my father's eyes and said to him, the
16 wings beneath my wings. I wanted him to that I was so proud
17 and thankful that he was my father and I knew he was very
18 proud when I graduated Catholic school with honors. Two years
19 later, I sang the same song to my father as we laid him down
20 to rest because of you. This time it was different, it
21 wasn't a celebration, we were mourning the loss of my hero.
22 You robbed my sister and I of the opportunity of seeing us
23 graduate high school, walking down the aisle, and seeing
24 grandchildren among all things, among other things in our
25 lives

1 I believe your punishment should be the death
2 penalty for since that is not an option, then you rot in
3 jail. I strongly believe that your punishment will be the
4 day you are standing before God, he will give you the
5 punishment you deserve. In the meantime, I'm okay with you
6 spending the rest of your remaining life in jail. You ruined
7 my life. You took away the most important thing in my life.
8 You have no idea what you have done to me and my family and I
9 hope to God that they give you the punishment that you
10 deserve.

11 It will never bring back my father, but I would be
12 at peace knowing that you would never hurt anyone or
13 anybody's family ever again. I sat in this courtroom for
14 weeks, you have no remorse, you don't care. As everyone is
15 coming up here saying what you took away from them and how
16 they feel, the only thing you do is sit there and laugh. I
17 don't know what kind of person you are, but again I know that
18 your punishment will come the day you are judged by God.

19 Thank you

20 THE COURT: Thank you.

21 Next witness, please.

22 MR. BURLINGAME: Mildred Delagdo Jiminez.

23 THE COURT: Good morning.

24 MS. JIMINEZ: Good morning, Judge. I want to begin
25 by thanking god first. I also thank the jury, prosecutors,

1 the judge involved in this and everyone who was involved in
2 the arrest of Charles Carneglia. I won't give you the
3 satisfaction of telling you what you took away from me. But I
4 share with you one of the many lessons my father taught me.

5 During the course of this trial what I heard the
6 most was fear. I want you to know when you decided to murder
7 my father in such a brutal way, you took him away from his
8 family and flesh. But not his spirit. My father has always
9 been respected and loved by his family and friends. He left
10 me with the ability to survive and to know the difference
11 between fear and respect. He taught Mildred and I being
12 respected is better then being feared being there are two
13 things in life you have to do. Number one is paying your
14 taxes and number two death.

15 When you are respected it's a honor, and a privilege
16 and to feared doesn't count because we're going to die
17 anyway. Therefore, my response to you, while you murdered an
18 innocent heroic family man he still lives in our hearts. My
19 father was respected and loved and honored while your fear
20 will accompany you in your old age as your bunkie.

21 I want to thank God for hearing my prays and Poppie
22 who are looking over us. I know my father finally is resting
23 in piece because justice has prevailed. I want to let you
24 know that there is no punishment big enough for you. You are
25 going to have a roof over your head, three meals, the

1 opportunity to get education, and many other things, so you
2 will never ever feel what it is to lose someone as special as
3 he was to us. But like my sister said, your day will come
4 when you stand before God because he is the only one that can
5 judge you.

6 I never felt so much hate towards a person in my
7 life, and I pray every day for that to go away, but I'm not
8 perfect so that still remains. I hate you with everything
9 that I have and I pray this Court takes into consideration
10 the lives of the people he destroyed when he decided to do
11 and take things into his own hands. You're not God. Taking
12 away peoples' lives you will pay for that. It doesn't bother
13 me that you stand here and look at me and have no remorse.
14 Not at all. Because your time will come. I want to thank
15 you all very much.

16 THE COURT: Thank you.

17 THE COURT: Next witness, please.

18 MR. BURLINGAME: Judge the wife of Jose Delgado
19 Rivera Alejandro wrote a statement. I would ask permission
20 to have it read.

21 THE COURT: Read it from the stand, please.

22 MS. SEIFAN: I apologize for not being able to
23 attend due to me being ill. I want to thank the prosecutors
24 and jury along with everyone else involved in this days. I
25 am not going into detail of what Charles Carneglia took from

1 my daughters and I due to the fact he's a monster. He will
2 never understand what we suffered when he killed my husband.
3 I wish the judge takes into consideration our pain and
4 suffering and sentences him to the highest extent of the law.

5 THE COURT: Thank you.

6 Do you have another witness?

7 MR. BURLINGAME: Daniel Pagan. He's not present.
8 Irene Cotillo.

9 THE COURT: Good morning.

10 MS. COTILLO: Good morning. Thank you, Judge
11 Weinstein and everybody else.

12 On November the 6th, 1977 Michael Catillo was
13 murdered, two days after my husband's birthday. My husband
14 could not be here because he's very, very sick. My brother,
15 his brother, my father-in-law we had to wake him up to tell
16 him that his son was dead. Right away we had to rush him to
17 the hospital because he had very bad emphysema and five weeks
18 after that he died December 14, 1977. My husband and I we
19 had a lot of problems. My mother-in-law was very, very sick,
20 high blood pressure, and she past away too. I wish she was
21 here to confront him and tell him how much she cried every
22 night.

23 My son, he was seven years old, I had to lie, never
24 went to the wake, didn't have my kids go there, my daughter
25 was two and a half, and telling him that his uncle was hit by

1 a car and he died for safety for him so that he would watch
2 crossing the street. Later on I told him the truth. He
3 didn't understand why, why. Now he'll never be a father,
4 he'll never be a grandfather, he'll never be an uncle for all
5 the kids.

6 I just don't understand this, but it's all blood
7 money, that's all you do is for to money. Money is evil
8 anyway. I hope that you suffer for a long time in jail and
9 again when you meet your maker, God, you're going to hell and
10 you'll suffer worse than that. I also hope that you will be
11 sent to Colorado, the maximum security prison, because I
12 heard it's underground --

13 THE COURT: You understand the Court has no power to
14 decide where and the conditions under which the defendant
15 will serve his sentence.

16 The law requires the Court to make recommendations
17 with respect to training and so on that anybody would be
18 required to have, but once the sentence is imposed it is the
19 Attorney General and the Department of Justice and
20 correctional institutions that will decide where and how he's
21 treated.

22 MS. COTILLO: It's underground, let him know how it
23 is to be under dirt like he sent everybody else, let him know
24 how it is never to see sun as the families destroyed and
25 crying. My husband is very, very sick. He can't take this.

1 It's very hard for everybody. I can't believe a person --
2 he's not a person he's not a human -- he's evil, it's money,
3 that's all it is and money can't do you anything now. Okay.

4 Thank you very much.

5 THE COURT: Thank you.

6 That is it?

7 MR. BURLINGAME: Yes.

8 THE COURT: Is there any other victim who wishes to
9 speak?

10 I will hear now from the defendant's counsel and the
11 defendant and any witnesses that the defendant wishes to
12 bring forward.

13 MS. SHARKAY: Thank you, Judge.

14 Your Honor, you have broad discretion in sentencing
15 in this matter.

16 THE COURT: Speak into the microphone, please.

17 MS. SHARKAY: The Court has broad discretion in
18 sentencing in this matter and the crimes of conviction are of
19 the most serious nature. The families, the press, the
20 colleagues of the deceased, deserve compassion and
21 understanding, but the Court, your Honor, must look to all of
22 the factors that should be considered when sentence is
23 imposed.

24 We expect that your Honor will sentence Mr.
25 Carneglia severely and we ask that you look at a number of

1 factors in determining where within the broad discretion you
2 have under the statute, under 35353 and under Booker and its
3 progeny.

4 The crimes for which Mr. Carneglia was convicted,
5 the most violent crimes from which we heard very eloquent
6 family and friends today, occurred between 20 and 30 years
7 ago.

8 Obviously, as time has marched on the people who
9 have spoken to the Court today grief I just as strong as it
10 was back at the time that their family members were killed.
11 But nonetheless, your Honor, decades have passed, Mr.
12 Carneglia the individual on whom the Court will impose
13 sentence today has changed.

14 As the Court heard during the course of the
15 testimony presented by the defense, Mr. Carneglia made
16 efforts to withdraw and distance himself from the life of a
17 gangster. Now, that was in the jurors mind not a complete
18 withdrawal. They did not find withdrawal.

19 Nonetheless, your Honor, the Court heard from
20 Maurice Kelly, the court heard from Johnnie White, and they
21 talked about the good things that Mr. Carneglia had done in
22 his life. They talked about a man who was different from the
23 man that was convicted for crimes that occurred 30 years ago.

24 Charles Carneglia as he sits before the Court is a
25 63 year old man. He has chronic emphysema. He's not in good

1 health. He has great difficulty breathing and sleeping.
2 Given his physical condition, your Honor, Mr. Carneglia's
3 life expectancy is not great. A review of actuarial tables
4 concerning a man of Mr. Carneglia's age and physical well
5 being, foretells a shortened life-span. The actuarial table
6 applied in the Red Book provided to the lawyers is a life
7 span of ten to 14 years. That, your Honor, is a life
8 sentence for Mr. Carneglia.

9 In this case, your Honor, it would be easy to be
10 overcome with emotion, to be completely punitive and to rely
11 solely on the nature of the crimes of conviction that are
12 over 30 years old. The defense seeks a non-guideline
13 sentence in this matter. We seek a sentence that does not
14 conclude with Charles Carneglia's death in jail. We'd
15 request that the Court temper justice with mercy, that the
16 Court consider the changes that have come from Mr. Carneglia
17 over the decades.

18 We ask the Court consider that the crimes of
19 conviction are decades old and that if the Court imposes a
20 sentence of ten years, 15 years, 40 and 45 years will have
21 elapsed since many of these crimes were committed and Mr.
22 Carneglia had been found guilty of those crimes.

23 Respectfully, Judge, we ask the Court impose a
24 sentence that is no greater than necessary to comply with the
25 purposes of sentence under the statute.

1 THE COURT: Thank you.

2 Does the defendant wish to be heard?

3 THE DEFENDANT: Yes, your Honor. Your Honor, you
4 promised a fair trial, I don't believe I got one because of
5 the material and the liar upon liar that testified against
6 me. I didn't have enough time to go through all of this
7 material, thousands of pages of discovery, and again liar
8 upon liar, testified against me. Everybody had a cooperation
9 agreement with the government and they are professional
10 murders. That's all, your Honor.

11 THE COURT: Thank you.

12 THE COURT: The government.

13 MR. BURLINGAME: Judge, the Court asked us to
14 address the --

15 THE COURT: Why don't you speak into the microphone.

16 MR. BURLINGAME: The Court asked the parties to
17 address the 3553 factors. I would like to start with the
18 circumstances of the offense. The defendant was convicted of
19 conspiring to participate in the affairs of the Gambino
20 family for over 30 years.

21 As your Honor previously detailed, a number of
22 times, the evidence overwhelmingly established his role in
23 the Gambino family was as a murderer, disposer of bodies and
24 as an enforcer.

25 He was convicted by the jury in this case of

1 carrying out four murders, Michael Catillo, age 25, when the
2 defendant stabbed him through the heart and killed him.

3 Salvator Suma, age 18, when the defendant stabbed
4 him through the heart and killed him.

5 Louis DeBono, the defendant executed by sneaking up
6 behind him, firing four bullets into his brain.

7 Jose Delgado River, the armor car driver and father
8 of seven, the defendant shot, and after Jose Delgado Rivera
9 received the injuries that he died from, he was beat from
10 behind with a pistol.

11 The Court has probably found the defendant also
12 responsible for the murder Albert Gelb, 27 year old court
13 officer, who had the gall to interfere with the defendant and
14 testify against him. The defendant murdered Gelb after
15 torturing him with threatening phone calls for over a year
16 and after the murder taunted Gelb and bragged about the
17 murder to his Gambino family associates.

18 The defendant's history and characteristics, the
19 defendant has led a profane life. The sole organizing
20 principle in his life has been his participation in the
21 Gambino family and his sole role in the Gambino family was to
22 kill and to dispose of bodies. He relished the role. He
23 bragged about the lives that he took, he taunted and
24 disrespected his victims and he desecrated the bodies of
25 Gambino family victims by melting them with acid.

1 Ms. Sharkey speaks of the defendant as a changed man
2 since those days. During the victim statements I took the
3 opportunity to look over at Mr. Carneglia, who remained true
4 to form, defiantly sneering at the victims, taunting them to
5 the best of his ability in this forum and then there is Mr.
6 Carneglia's own comments, which shows lack of acceptance for
7 any of the responsibility for the horrific, horrific losses
8 that we heard about this morning.

9 The defendant did everything he could to make sure
10 this day would not come. He killed a witness against him, he
11 intimidated scores of others your Honor wrote in United
12 States versus Giganti, by Fredrich Von Logau, if general and
13 specific deterrence are to have any meaning in the criminal
14 system that the miles of law like the miles of god grind
15 slowly but they grind exceedingly slow.

16 The defendant did all that he could that the miles
17 of justice would never touch him. Today at long last they
18 have. The defendant is unrepentant, he is unremorseful. The
19 case was overwhelming, the cooperating witnesses' accounts
20 were corroborated by mountains of evidence. There is no
21 doubt who that man is and what he has done, or the agony that
22 he has caused as heard this morning.

23 These victims have waited years for justice, they
24 should wait no longer. We have heard the force of their
25 words and felt their loss. We ask you for the small measure

1 of justice and comfort that a court in this great country can
2 offer. We ask for a sentence of life imprisonment. It's the
3 guideline sentence. It's the only just sentence. It's the
4 right sentence.

5 Thank you.

6 THE COURT: Thank you.

7 The changes in the sentencing memorandum indicate by
8 those matters stricken which evidence will not be taken into
9 account in determining the appropriate sentence, even though
10 that evidence of culpability was strong.

11 The guideline level is found to be 47, criminal
12 history category is five, requiring under the guidelines a
13 life sentence.

14 Even if the guideline computation were found
15 inaccurate by the Court of Appeals on appeal or one or more
16 racketeering act convictions were to be set aside one of the
17 counts should be set aside by the Court of Appeals, the
18 sentence now being imposed would be the same under Section
19 3553 A and the general discretion of the Court because of the
20 need for total incapacitation of the defendant, general
21 deterrence in order to indicate the seriousness of the
22 offense and to promote respect for the law under the statute
23 and under the most recent Supreme Court cases to show respect
24 for the jury's determination.

25 Accordingly, the defendant is sentenced as follows:

1 Count One, life imprisonment, the maximum. Five
2 years supervised release, the maximum. \$100 special
3 assessment, the maximum. \$200,000 fine, the maximum. The
4 fine is imposed since the Court is not convinced that there
5 are no other assets acquired directly and indirectly during
6 the criminal history of this defendant.

7 Count Two, 20 years imprisonment, the maximum,
8 concurrent. Three years supervised release, the maximum,
9 concurrent. \$100 special assessment consecutive. \$250 fine,
10 the maximum, consecutive.

11 Are there any further objections or comments. The
12 government?

13 MR. BURLINGAME: Judge, I believe, you misspoke.
14 You said \$250, the maximum.

15 THE COURT: \$250,000.

16 MR. BURLINGAME: No objection.

17 THE COURT: . Is that accurate, the defendant?

18 MS. SHARKAY: No.

19 THE COURT: Marshal take custody of the defendant.

20 MR. FARBER: Judge, there is one issue. We ask the
21 Court to recommend a designation as close to the New York
22 metropolitan area as possible.

23 THE COURT: Denied.

24 Stop that.

25 The marshals will take custody of the defendant and

1 present him to the Attorney General for purposes of
2 incarceration.

3 Thank you.

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